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Vindication on Clean Air

In 1999 a three-judge panel of the United States Court of Appeals for the D.C. Circuit issued a hugely controversial decision that not only paralyzed the Clinton administration's clean-air strategy but challenged the government's basic regulatory architecture as well. On Tuesday the same panel ruled that the Environmental Protection Agency could proceed with regulations it had blocked in 1999. The decision brought full circle a tortured legal struggle that wound through the Supreme Court and the full D.C. Circuit. It delighted clean-air advocates, who have not had much to cheer about lately. And it imposes an obligation on Christie Whitman, the E.P.A. administrator, to move aggressively to enforce regulations that have been in legal limbo for too long.

The original decision, responding to industry lawsuits, overturned two important rules issued by the Clinton administration in 1997. One rule established tough new limits on ground-level ozone, a major contributor to urban smog. The other established new limits on microscopic dust-like specks called particulates. Though the health risks of both pollutants were well established, the rules had been bitterly opposed by several Midwestern state governments and many big utilities.

In its 1999 ruling the Circuit Court dusted off a relatively obscure constitutional theory called the "non-delegation doctrine," arguing that when Congress passed the Clean Air Act it improperly delegated to the environmental agency authority to set standards. In February 2001, however, the Supreme Court ruled unanimously against the "non-delegation" argument, upholding a half-century of jurisprudence and custom that has allowed Congress to concern itself with broad policy and assign detailed rule-making to federal agencies.

The Circuit Court argued further that the E.P.A. had failed to produce an "intelligible principle" for its new pollution limits — suggesting that its science was insufficient. The Supreme Court asked the lower court to address head-on the question of whether the agency had acted "arbitrarily or capriciously." After due consideration, the lower court now finds that the 1997 standards were based on sound science and a sound reading of the law. In the interests of public health, Ms. Whitman must get the regulatory machinery working.

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